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3 NATIONAL INDIAN GAMING COMMISSION

4 CLASS II CLASSIFICATION STANDARDS

5 GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

6 WITH THE ABSENTEE SHAWNEE NATION

7

8 HELD IN OKLAHOMA CITY, OKLAHOMA

9 ON AUGUST 9, 2006

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24 REPORTED BY: TRENA K. BLOYE, CSR

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## NIGC CONSULTATION - ABSENTEE SHAWNEE NATION

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### 1 APPEARANCES

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#### 4 NATIONAL INDIAN GAMING COMMISSION:

5 Philip N. Hogen, Chairman

6 Cloyce "Chuck" V. Choney, Commissioner

7 Natalie Hemlock, Special Assistant to the

8 Commission

9 Penny Coleman, Acting General Counsel

10 Michael Gross, Senior Attorney

11 John R. Hay, Staff Attorney

12 Joseph M. Valandra, Chief of Staff

13 Tim Harper, Region Chief, Region V

14 Marcy Pate Olber, Senior Field Investigator

15 Jeanette Ross, Field Investigator

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18 ON BEHALF OF THE ABSENTEE SHAWNEE NATION:

19 Scott Miller, Lt. Governor

20 Patrick Watson

21 Mayra Paddleter

22 Steve Johnson

23 Klint Cowan

24 William Norman, Attorney

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1 COMMISSIONER CHONEY: Welcome

2 everyone. I want to welcome you to this Class

3 II standards consultation meeting. And by way

4 of introduction, I want to advise you first of

5 all that this meeting will be recorded. And

6 once it's recorded it will become a matter of

7 public record. We are going to put it on our

8 web page. And also there be will a transcript

9 made. And if you wish to obtain it, you can

10 sent a request in. And also, anyone can

11 submit a request for these public records if

12 they so wish.

13 And if any time during the course

14 of the meeting you wish to talk about any  
15 other issue other than Class II standards, we  
16 have to go off the record, because since it is  
17 public record, I don't think you want anyone  
18 to know your private tribal business.

19 By way of introduction, I'm Chuck  
20 Choney, commissioner of the National Indian  
21 Gaming Commission. I would like to introduce  
22 Phil Hogen, chairman of the National Indian  
23 Gaming Commission.

24 Penny Coleman, director of our  
25 Office of General Council. Next to her is Tim

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1 Harper. He's a region director for the NIGC  
2 out of Tulsa. To my right is Natalie Hemlock.  
3 She's the special assistant to the Commission.

4 And then Jeanette Ross, senior  
5 investigator to our region out of Tulsa. And  
6 sitting next to her is Senior Attorney John  
7 Hay from our Office of General Council.

8 And also by way of introduction  
9 and for the record, if you could introduce

10 yourselves.

11 LT. GOVERNOR MILLER: Scott  
12 Miller, lieutenant governor, Absentee Shawnee  
13 tribe.

14 MR. JOHNSON: Steve Johnson,  
15 secretary of the Absentee Shawnee Tribe.

16 MS. PADDLETER: Mayra Paddleter,  
17 assistant -- (Inaudible.)

18 MR. NORMAN: William Norman with  
19 Hobbs, Strauss, Dean & Walker on behalf of the  
20 Absentee Shawnee Tribe. And this is my  
21 colleague, Clint Cowan.

22 MR. WATSON: And Patrick Watson,  
23 general manager of the Thunderbird Casino of  
24 the Absentee Shawnee Tribe.

25 CHAIRMAN HOGEN: Welcome to this

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1 government-to-government consultation session.  
2 We are here because on the 25th of May the  
3 National Gaming Commission published in the  
4 "Federal Register" some proposals, proposals  
5 to amend some definitions and promulgate some

6 standards that would hopefully better  
7 distinguish the difference between electronic  
8 and technologic aids that tribe can use to  
9 play Class II games. They can play without a  
10 compact from those electronic facsimiles of  
11 games of chance and slot machines of any kind  
12 that require compacts.

13 That's been a contentious issue  
14 nationally, but probably no place more so than  
15 here in Oklahoma. Of course, recent history  
16 saw the development of a tribal state compact,  
17 not one that gave the tribes a lot of choice,  
18 but at least it is a compact. And, hopefully  
19 that resolves some of the concerns.

20 But it's still very important that  
21 tribes, when they go to invest millions of  
22 dollars in gaming equipment know that they can  
23 do it without the threat of somebody coming  
24 along tomorrow and saying, "That's wrong. You  
25 can't do that anymore."

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1 And so we think it will be useful

2 to the industry to have some clarity in this  
3 issue. The contentious issue, of course, is  
4 where do you draw that line and how specific  
5 do we get?

6 So we have assembled these  
7 proposals with the assistance of a Tribal  
8 Advisory Committee and have been at it for  
9 some time now. We are, hopefully, in the  
10 final stage of this. In addition to these  
11 classification standards that were published  
12 in May, this Friday we will be publishing our  
13 technical standards. That's not something  
14 new. That's something we worked on kind of  
15 from the outset.

16 And the set of technical  
17 regulations that will appear in the "Federal  
18 Register" on Friday will look very much like  
19 those that we had proposed, published on our  
20 website some time ago. But they did get a  
21 little obsolete. Technology moves very fast  
22 and we thought we better update them before we  
23 published them. So they will be out.

24 We set the end of the comment

25 period for those regulations as September

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1 30th. We also extended the comment period for  
2 these classification standards to that same  
3 date, the 30th of September.

4 On the 19th of September in  
5 Washington, DC we will be holding a public  
6 hearing on this subject. The format is still  
7 under discussion. But generally we think we  
8 will have a number of panels, presenters from  
9 various areas or points of view. We will have  
10 some manufacturers and some vendors. We will  
11 have some tribal leadership, regulators. We  
12 will have folks from the state point of view  
13 as well.

14 After we got all of that advice  
15 and after we review the comments that will be  
16 received by the 30th of September, we will  
17 close the door, look at what we have written,  
18 see what's been said, decide if we want to go  
19 ahead with this and, if so, do we want to make  
20 any changes and, hopefully, bring it to a



21 conclusion.

22 I'm cautiously optimistic we can  
23 write a set of regulations that will permit  
24 tribes to do fast, fun, profitable Class II  
25 gaming, but will allow a readily

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1 distinguishable difference that will be  
2 perceived by the players and the regulators,  
3 so forth, from Class III equipment.  
4 So, having said that, we would  
5 like to hear from you, we would like to hear  
6 your comments on what we have proposed, try to  
7 respond to any questions you might have, and  
8 maybe hear how this fits into your operation,  
9 if it did does. So, turn it over to you.

10 LT. GOVERNOR MILLER: Okay. Well,  
11 of course, our operation is a majority Class  
12 II games, so any new regulations would affect  
13 our operation.

14 I know there is that fine line  
15 that everyone has been trying to define in  
16 Class II and Class III. You know, as far as,

17 of course, you know our situation with the  
18 state that if we do happen to go Class III  
19 that we do have to share with the state. The  
20 Absentee Shawnee would like to, if at all  
21 possible, stay away from it and be more  
22 revenue headed in our direction for the tribe,  
23 tribal programs, because that's where all of  
24 our money goes, is to our programs.

25 So the regulations, if it could be

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1 refined to be more of an advantage to the  
2 tribes, especially in Oklahoma, we would be in  
3 favor of that. But if it heads to more the  
4 Class III area we would be opposed to that,  
5 because of the state -- having to share with  
6 the state.

7 MR. NORMAN: Did you hear anything  
8 yesterday in the consultations that, maybe,  
9 has given you pause in terms of the direction  
10 you are going or some things that you may look  
11 at more seriously now about changing in terms  
12 of the definition of facsimile or the

13 two-second time frame that's within the rule,  
14 or even the participation of the tribes and  
15 the process for certifying games?

16 CHAIRMAN HOGEN: Well, we got a  
17 lot of good advice yesterday. Some of it was  
18 echoing what we heard in some of the other  
19 consultations. What we know is that here in  
20 Oklahoma more so than probably any other  
21 places that we have been, there is a mix of  
22 Class II and Class III. And in many cases,  
23 Class II dominates. And the customers have  
24 been trained, so to speak, to use this Class  
25 II equipment and seem to like it.

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1 Some said they had customers who  
2 would go to Las Vegas and don't like playing  
3 the slot machines. They want to come home and  
4 play the bingo games. So, we will put that  
5 into the formula, so to speak, and try not to  
6 mess it up any more than we have to if we  
7 finalize this process.

8 And we know that, you know, there

9 will probably be an economic impact. That  
10 might occur by not getting as many dollars  
11 through the facility in a day as had been the  
12 case, or maybe shifting to Class III and that  
13 means, as Lieutenant Governor just said,  
14 sending some of those dollars to the state.

15 I think some folks said: We are  
16 making more money with Class III than we did  
17 with Class II, even though we're sending the  
18 money to the state. So there's a mix. We're  
19 trying to get a handle on that. We are trying  
20 to take it all into consideration.

21 MR. NORMAN: Was there any reason  
22 why the facsimile definitions were proposed in  
23 a separate rule from the other definitions for  
24 bingo?

25 CHAIRMAN HOGEN: Well, yeah. I

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1 think because they are in a separate section.  
2 I mean, the classification standards will be,  
3 more or less, a new package. The definitions  
4 are in the definitions section. But it's all

5 addressed to the same area. So it's just  
6 format more than, you know, segregating  
7 different subjects, I think.

8 MR. NORMAN: Obviously, I referred  
9 to the two-second time frame. I know that  
10 it's been mentioned that the intent here of  
11 the NIGC is not to slow down the games, but to  
12 define that bright line. But by all  
13 appearances, when you look at the things that  
14 are being introduced into the Class II medium,  
15 they do, in fact, slow down the game, make the  
16 game less attractive. We know the effect of  
17 that.

18 Can you help us understand a  
19 little bit more why you have introduced those  
20 particular vehicles like the two-second dob  
21 time? And like the fact that, at least as I  
22 read the rule, regardless of whether everybody  
23 dobbs in the first half second, you are going  
24 to wait two seconds before the game can  
25 proceed?

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1           CHAIRMAN HOGEN: Well, that's what  
2 we're looking at. If everybody is done  
3 dobbling, why wait? We are looking at that.  
4 Of course, that could chop off a little of  
5 that time.

6           But in terms of, you know, I think  
7 one of the representatives we spoke with  
8 yesterday suggested that you could play 36 of  
9 these one games in a minute, whereas you  
10 could, at your very best, play six games under  
11 our configuration. And I think it becomes a  
12 lot less like bingo when you do -- when all of  
13 that happens so fast.

14           You would have to be a whole lot  
15 quicker than I am to understand what happened  
16 on 36 different events during that many minute  
17 period in each bingo game. And so I think we  
18 move, cross that line that separates  
19 facsimiles of games of chance.

20           So we do want to provide an  
21 interval for players to participate, but they  
22 shouldn't have to just sit there on their  
23 heels if everybody has participated, probably.

24           MR. NORMAN: Have you given any  
25   more consideration to the requirement for the  
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1   size of the bingo card on the screen and the  
2   two-inch statement about whether it is a bingo  
3   game or game similar to bingo, how much room  
4   that takes up in terms of explaining this is a  
5   bingo game compared with the entertaining  
6   display?

7           CHAIRMAN HOGEN: We're still  
8   thinking about that. And we expect at this  
9   public hearing, hearing from the vendors and  
10   manufacturers, we will also learn more in that  
11   regard. The idea of a disclaimer that you are  
12   playing bingo, not a slot machine, I think we  
13   are still dedicated to accomplishing that one  
14   way or another. Whether the way we propose it  
15   will be the final way, I don't know.

16           And one of the things we are  
17   interested in hearing about is just how  
18   difficult it might be to reconfigure existing  
19   equipment that doesn't have half the screen or

20 half the display space dedicated to one that

21 did.

22 That will be useful to us.

23 MR. NORMAN: What was the thought

24 process behind the 50 or 51 percent of the

25 screen being taken up by the bingo card?

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1 CHAIRMAN HOGEN: Well, as we study

2 the history of the Indian Gaming Regulatory

3 Act, one of the -- there is a couple of themes

4 that emerged. One, give tribes the

5 flexibility. Let them take advantage of

6 technology. But, also, there needs to be a

7 recognizable difference between the Class II

8 activity and the Class III. And if that bingo

9 card is prominently displayed, that's a means

10 of readily distinguishing.

11 MR. NORMAN: I know there has been

12 a lot of discussion about the facsimile issue.

13 I probably, between the tribes and NIGC, there

14 is a fundamental disagreement. When I look at

15 the statutory legislative history of IGRA --



16 let me just read this. This is referring to

17 the use of aids versus the facsimile.

18 It says, "Such technology would

19 merely broaden the potential for participation

20 levels and is readily distinguishable from the

21 use of electronic facsimile in which a single

22 participant plays a game with or against the

23 machine rather than with or against the

24 players."

25 Now, in my mind, that is

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1 congress's statement what a facsimile is. The

2 issue is not the type of participation the

3 player has, but whether they are participating

4 with the game itself or with other players.

5 Can you tell us what your thought

6 process is or where you came to conclude that

7 it's something other than that?

8 CHAIRMAN HOGEN: Well, I will tell

9 you what my thought process is. I think

10 congress had a vision of bingo and bingo-like

11 activity and had a vision of slot machine.

12 Slot machines, you walk up, put your money in,  
13 play the game, it's over. Bingo you are  
14 involved with some other folks.

15 I think it's just too much of a  
16 stretch to say bingo experience can become  
17 almost identical to the slot machine  
18 experience. I think there's got to be a  
19 little -- that player participation.

20 You are asleep at the switch and  
21 you don't cover your number, you can lose.  
22 It's not the machine just has all the  
23 responsibility and that does it all.

24 MS. COLEMAN: Well, I think, in  
25 addition, I don't think the Commission feels

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1 it's moving away from that language. That,  
2 you know, when you are talking about readily  
3 distinguishable, that therein lies one of the  
4 big problems, is that the -- at some point the  
5 slot machines and the Class II bingo machines  
6 are no longer distinguishable. And, you know,  
7 things like statements, "This is bingo,"

8 prominent bingo cards, things that make it  
9 clear to the player, "This is bingo," makes it  
10 clear to the regulator, "This is bingo."

11 Those things make the machine and  
12 the game readily distinguishable from a  
13 facsimile from a Class III slot.

14 MR. NORMAN: Well, I think  
15 certainly from our standpoint, if there were a  
16 choice between identifying and helping the  
17 players become more informed about the type of  
18 game that they are playing as opposed to  
19 putting in place elements of the game that  
20 will slow it down and make it non-viable any  
21 longer, certainly, we would buy for educating  
22 the player and the distinctions between the  
23 games.

24 I guess, you know, the concern of  
25 this tribe in particular is that they were one

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1 of the key elements in the Class III compact  
2 for a variety of reasons, some because they  
3 saw it as the right thing to do. Some because

4     there was some pressure on them from some  
5     prior issues.

6             But they bargained for  
7     specifically and very hard on behalf of all  
8     the tribes in Oklahoma the right to be the  
9     primary regulator in Class II and Class III  
10    and the right not to have any limitations on  
11    Class II. That is a very important factor.

12            As you know, Class II has been the  
13    life blood for all of the tribes in Oklahoma.  
14    I'm sure you have heard of all of the  
15    wonderful things that have transpired in the  
16    local economies with the tribes and their  
17    tribal members as a result of Class II.

18            So it is a concern that having  
19    fought so hard and bargaining for that  
20    particular aspect of the compact itself so  
21    that the tribes would have the flexibility  
22    that now, potentially, is not going to be  
23    there as a result not of the state, but of new  
24    federal regulations.

25            And so I just echo the concerns of

1 the Lieutenant Governor that Class II has got  
2 to remain a viable industry here in Oklahoma  
3 for that reason alone if for no other.

4 And, obviously, at some point  
5 there will be an end to that compact and we  
6 will be in the position of -- that we have  
7 been in forever with the exception of a couple  
8 of years ago, and the other prominent states  
9 are in now, where the state is refusing to  
10 negotiate in good faith and tribes have no  
11 option and nowhere to go. And so, you know,  
12 our concern is we have been through that fight  
13 once. We have survived it in the short run,  
14 but we certainly don't want to be in that  
15 position again.

16 I think I would encourage you to  
17 look at the overall economic effect that this  
18 would have, perhaps look at maybe  
19 distinguishing between educating a player and  
20 things that may be onerous in terms of changes  
21 to the games that would slow them down.

22 But with that, I'm not sure if we

23 have other comments on the classification

24 issues?

25 MR. SHUNATONA: No, I don't have

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1 any.

2 MR. NORMAN: We would, if we

3 could, like to go off the record for a few

4 minutes.

5 CHAIRMAN HOGEN: All right. We

6 will call to a close this consultation

7 session. We will take very seriously the

8 comments that you have made. And we know that

9 Oklahoma compacts will come to an end and

10 there will be renegotiation period. I'm

11 hopeful that if there is better clarity with

12 respect to what Class II is at some point in

13 time, that will accommodate rather than

14 frustrate those efforts of renegotiating.

15 Okay. That will bring us to a

16 conclusion.

17 (Proceedings concluded.)

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1           C E R T I F I C A T E

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4 STATE OF OKLAHOMA    )

) SS:

5 COUNTY OF OKLAHOMA   )

6       I, Trena K. Bloye, Certified Shorthand

7 Reporter for the State of Oklahoma, certify that the

8 foregoing transcript of proceedings taken by me in

9 stenotype and thereafter transcribed is a true and

10 correct transcript of the proceedings; that they

11 were taken on August 9, 2006, at the Cox Convention

12 Center, Oklahoma City, State of Oklahoma; that I am

13 not an attorney for nor a relative of any said

14 parties, or otherwise interested in the event of

15 said action.

16       IN WITNESS WHEREOF, I have hereunto set my

17 hand and seal of office on this the 11th day of

18 August, 2006.

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Trena K. Bloye  
Certified Shorthand Reporter  
for the State of Oklahoma

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